



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 4, 1997

Mr. Kevin D. Pagan
Assistant City Attorney
City of McAllen
P.O. Box 220
McAllen, Texas 78505

OR97-0241

Dear Mr. Pagan:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 103569.

The City of McAllen (the "city") received a request for search warrants, arrest warrants and all supporting affidavits and complaints filed with regard to specific individuals. However, the city seeks to withhold the requested information based on section 552.108 of the Government Code. You enclose copies of the information the city seeks to withhold. We have considered the exception you claim and reviewed the submitted information.

We note that an affidavit once filed with the court, becomes a public record and may not now be withheld. *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). If the probable cause affidavit was made to support a search warrant, the affidavit is public by statute if it has been executed. See Code Crim. Proc. art. 18.01(b). Therefore, the city may not withhold an executed search warrant from required public disclosure under section 552.108 of the Government Code. If any of the affidavits were not filed with the court, we will address those documents together with the other submitted information under section 552.108.

Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Gov't Code § 552.108; see *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). We note, however,

that information normally found on the front page of an offense report is generally considered public.¹ *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). We therefore conclude that, except for front page offense report information and court filed public documents, section 552.108 of the Government Code excepts the requested records from required public disclosure. On the other hand, you may choose to release all or part of the information that is not otherwise confidential by law. Gov't Code § 552.007.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/rho

Ref.: ID# 103569

Enclosures: Submitted documents

cc: Mr. Reynaldo M. Merino
Attorney at Law
508 S. 12th Avenue
Edinburg, Texas 78539
(w/o enclosures)

¹The content of the information determines whether it must be released in compliance with *Houston Chronicle*, not its literal location on the first page of an offense report. Open Records Decision No. 127 (1976) contains a summary of the types of information deemed public by *Houston Chronicle*.